IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1207 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANSUKHBHAI SHIVABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:
MR KR RAVAL for appellant
MR HH PATEL, ld.ADDL.PUBLIC PROSECUTOR for Respondent

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The appellant in this appeal has challenged the judgment and order dated 16.10.1992 passed by the learned

Addl.Sessions Judge, Surat, at Vyara in Sessions Case No. 79 of 1992 convicting the appellant for the offence punishable under Sec.302 of the Indian Penal Code and sentencing him to suffer Rigorous Imprisonment for life.

2. The appellant was tried for committing murder of his wife Sita with the help of the handle of the axe. The prosecution case is that on 24.12.1991 any time after 8.00 p.m., deceased Sita was beaten mercilessly by the appellant as she did not cook food because of the ill-health, with the result she died in the morning of 25.12.1991.

Nitinbhai Bhikhubhai PW7-Exh.12, the complainant in the present case has filed the complaint at Exh.14 on 25.10.1991 before Bardoli Police Station wherein he has stated that he is doing labour work. According to him, his two sisters, namely, Bhaniben as well as deceased were staying with their husbands in village Bamni. The marriage of the deceased with the appellant was taken place nine years prior to the date of incident. Out of the wed-lock, three children were born, however, all of them died within a period of five to six months after their birth and because of this, frequent quarrels were taking place between the appellant and the deceased. On the day on which the incident took place, when he returned from work in the evening, he came to know that his brother-in-law had beaten his sister and therefore, he had gone to the house of his sister. He found that she was lying on the floor. On being inquired, she informed him that as she was not feeling well, she had not prepared the food and therefore, his brother-in-law (appellant herein) had mercilessly beaten her with the handle of the axe and she sustained injuries. He saw the injuries sustained by her on her back. As the appellant was not there in the house, the complainant left the house by giving assurance that he would take her to the hospital on the next day morning. The complainant was informed on the next day at about 8.00 a.m. by his another brother-in-law, namely, Maganbhai, PW2-Exh.7 that Sita is no more. He accordingly went to the house of the deceased with Sarpanch Nitinbhai, PW7-Exh.12 and thereafter both of them had gone to Kadod Police Station and from there, they reached Bardoli Police Station by bus for the purpose of lodging the complaint.

Shri R.M.Chauhan, PSI, PW11-Exh.24 started investigating the case and thereafter, after collecting the necessary evidence, filed the charge sheet against the appellant.

The charge Exh.2 under Sec.302 of the IPC was framed against the appellant to which the appellant denied and claimed to be tried. The appellant totally denied his involvement in commission of the offence, in his further statement recorded under Sec.313 of the Code of Criminal Procedure. The learned Addl.Sessions Judge tried the case and ultimately after considering and appreciating the evidence on record, found that the prosecution proved the charge beyond reasonable doubt and he accordingly convicted the appellant for the offence under Sec.302 of IPC and imposed sentence to suffer Rigorous Imprisonment for life.

3. Mr.K.R.Raval, learned Advocate appearing for the appellant has taken us through the entire record. He, after perusing the entire evidence, submitted that the trial Court has committed an error in convicting the appellant for committing murder of his wife relying upon the evidence of the prosecution witnesses. He submitted that the prosecution witnesses are relatives and therefore, they are highly interested witnesses and hence no reliance can be placed on their evidence. He further submitted that the ocular evidence is not consistent with the medical evidence inasmuch as the Doctor who performed the post mortem has clearly opined that the incident must have taken place 24 hours prior to the time of post mortem. If this is accepted, in that view, according to the learned Advocate, the ocular evidence is not believable. Mr.H.H.Patel, learned Addl.Public Prosecutor, on the other hand, supported the judgment of the trial Court in toto.

4. In the instant case, the prosecution has examined five eye witnesses over and above the evidence of the complainant, Bhaniben, PW1-Exh.6 is sister of the deceased while Maganbhai, PW2-Exh.7 is the husband of Bhaniben, PW1. Besides their evidence, the prosecution has also examined Bhaniben Kanjibhai, PW6-Exh.11, Paliben, PW9-Exh.9, and Savitaben, PW5-Exh.10. All these prosecution witnesses have witnessed the incident as they are residents of Deri Falia of village Bamni and are neighbours of the deceased. They all are labourers. On reading their evidence, it is clear that they used to go for labour work at about 8.00 a.m.-9.00 a.m. According to their evidence, before going to their work, they used to pass near the house of the appellant and they in fact saw the appellant beating the deceased with the handle of the axe. It is the consistent say of the prosecution witnesses that it was not unusual for them as the appellant used to beat the deceased off and on. When they tried to intervene, the appellant also gave abuse to

them. It is further the say of the aforesaid witnesses that the deceased was again beating the deceased in the evening on the same day. In fact, Bhaniben, PW1, sister of the deceased met the deceased and wanted to know the cause of the beating to which the deceased told that as she was beaten in the evening, it was not possible for her to prepare food and therefore, she was beaten. Bhaniben, PW1, in fact saw the injuries on different parts of the person of the deceased. All the aforesaid witnesses being residents of the same Falia and are in fact neighbours of the deceased, there is no reason to doubt their evidence. Nothing has been brought in their cross examination which can help the defence.

The complainant, Hasmukhbhai who is also residing in the same Falia at certain distance from the house of the deceased has stated in his evidence regarding the beating part having been taken place in the evening. He has stated in his evidence that on being inquired about the incident, the deceased informed him that as she could not cook food in the evening as she was not well, she was beaten by the appellant. He has further stated that his sister showed him the injuries on various parts of her body. He informed the deceased that as it was already late, he would take her to the hospital on the next day morning. By giving this assurance, he left the place of the deceased. The learned Advocate for the appellant has contended that the evidence of the complainant is not reliable in the sense that he has not made any arrangement to take the deceased to the hospital in that evening itself. In our opinion, why the deceased was not taken to the hospital is not material. This, at the most shows a little carelessness on the part of the complainant. We should not lose sight of the fact that the complainant is a rustic illiterate Adivasi and has no means namely, a cart or any other mode to take the deceased to hospital at such late hours. Besides, the appellant was also not there in the house and therefore, under the circumstances, except giving assurance to the deceased, he could not have done anything further than that. Merely because the complainant had not given proper treatment to his injured sister on the same day will not make the evidence of the complainant unreliable. The cumulative effect of the evidence of the complainant as well as the other prosecution witnesses is that the deceased was beaten not only in the morning but in the evening also. The evidence of the Dr. Santoshkumar, PW9-Exh.15, who is the Medical Officer of Vaskui Family Medical Centre, also supports the evidence of PWs. As per his evidence, the deceased was brought to him at about 8.00 p.m. on 25.12.1991 for post mortem. He

started performing the post mortem in the morning at about 8.30 on 26.12.1991. The Doctor has found the following injuries on the person of the deceased:

(1) Rt.side above eye over fortal area black colour brusiac size 2"x1".

(2) Rt.eye over and of eye angel, Brusiac 1/2"x1/2".

(3) Rt.occipital area of skull (Head), contused abrasion size 1"x1/2"x1/2" lacerated.

(4) Rt.side over Rt.clavical near medial and Brusiac black colour size 2"x1" 2 in number.

(5) Left side over medial and of clavicle size 2"x1" one in number (brusiac black colour).

(6) Left hand, below left elbow at elbow side. Contusion black colour brusiac.

(7) Left wrist joint contused black colour brusiac.

(8) Left thigh at middle. Have contusion with black colour brusiac 3"x2".

(9) Back side multiple various size brusiac.

(10) In neck both side at near of clavicle black colour linear black brusiac size 1"x1"x1"x1".

(11) Rt.thigh black colour contused brusiac 1"x1" at middle.

(12) Left side on medial side of chest over near hypochandrium region. Lt.abrasion irregular.

Besides the said injuries, the Doctor also found the fractures as under:

(1) Frontal bone.

(2) Occipital bone.

(3) Rt./Lt. clavicle fractured at middle.

(4) Left radio ulna at elbow joint fracture.

(5) Left thigh (Left femur fracatured).

(6) Left wrist joint fracture.

(7) Left side 6-7th ribs fractured incomplete.

According to the Doctor, the external injuries are in consistent with the internal injuries. The Doctor has opined about the cause of death due to shock - Hemorrhage from cerebral area of cerebral artery and laceration of left side in Spleen medial side (Blood clot) present result in death. The Doctor has also stated in no uncertain terms that all the external as well as internal injuries are possible with the muddamal handle. In cross examination, the Doctor has opined that the deceased must have expired before 24 hours. He has further opined that after receiving such injuries, the person would become restless and would seek for help. He has admitted that if the person is not given immediate treatment, there is no chance of his survival. Having considered the evidence of Dr.Santoshkumar S. Patwani, we do not see anything which may help the defence though the Doctor has opined the age of the injuries to be 24 hours and that would not demolish the case of the prosecution. We would rather like to go by the ocular evidence against the opinion of the Doctor being established when the evidence of the Doctor having been consistent with the evidence of the other prosecution witnesses. We, therefore, see no merit in the submission advanced by the learned Advocate for the appellant.

5. Learned Advocate also tried to submit that as the appellant caused injuries with the help of the handle of the axe which is not the blunt or sharp portion of the weapon, there was no intention on the part of the appellant to commit murder and therefore, he can be convicted for a lesser imprisonment under Section 304 of the Indian Penal Code rather than Section 302 of the Indian Penal Code. Having considered the fact that the deceased was beaten mercilessly in the morning as well as in the evening on the day in question with the result, the deceased sustained as many as 12 injuries and seven fractures on the vital parts of the body out of which four injuries, i.e. Injury Nos.1, 2, 3 and 12 as per the medical evidence, in ordinary course of nature are sufficient to cause death, we hardly see any ground to take a lenient view in the matter. In our opinion, the learned trial Judge was justified in convicting the appellant for the offence under Section 302 of the Indian Penal Code. Suffice it to say that we are in total agreement with the reasoning and the ultimate conclusion reached by the learned trial Judge. We accordingly see no merit in this appeal. The appeal stands dismissed.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)

Sreeram.